

ORDINANCE NO. 07-07

ORDINANCE REZONING PROPERTY FROM M-1 (INDUSTRIAL DISTRICT) TO C-2 (LIBERAL RETAIL COMMERCIAL DISTRICT) SUBJECT TO A PROFFER OF A DECLARATION OF RESTRICTIVE COVENANTS, LIMITING THE USE OF THE PROPERTY TO A RESTAURANT, TO WHICH THE CITY ACCEPTS. **PROPERTY LOCATED AT THE SOUTHWESTERN CORNER OF THE INTERSECTION BETWEEN WEST 16 AVENUE AND WEST 37 STREET, HIALEAH, FLORIDA.** REPEALING ALL ORDINANCES OR PARTS OF ORDINANCES IN CONFLICT HERewith; PROVIDING PENALTIES FOR VIOLATION HEREOF; PROVIDING FOR A SEVERABILITY CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Board at its meeting of December 13, 2006 recommended approval of this ordinance; and

WHEREAS, the petitioner proffered a declaration of restrictive covenants limiting the use of the outparcel that is being rezoned to a restaurant, to which the City accepts.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND THE CITY COUNCIL OF THE CITY OF HIALEAH, FLORIDA, THAT:

Section 1: The petitioner proffered a declaration of restrictive covenants limiting the use of the property to a restaurant, to which the City accepts, a copy of which is attached hereto and made a part hereof as Exhibit "1".

Section 2: The below-described property is hereby rezoned from M-1 (Industrial District) to C-2 (Liberal Retail Commercial District) subject to a proffer of a declaration of restrictive covenants limiting the use of the property to a restaurant, to which the City accepts. Property located at the southwestern corner of the intersection

between West 16 Avenue and West 37 Street, Hialeah, Miami-Dade County, Florida and
legally described as follows:

A PARCEL OF LAND SITUATED IN SECTION 5, TOWNSHIP 38 SOUTH, RANGE 41 EAST, MIAMI-DADE COUNTY, FLORIDA, ALSO BEING A PORTION OF TRACT 17 OF FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO.1 IN DADE COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 2, PAGE 17, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

COMMENCE AT THE SOUTHEASTERLY CORNER OF TRACT 19 OF FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1 IN DADE COUNTY, FLORIDA, AS RECORDED IN PLAT BOOK 2, PAGE 17, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE ALONG THE SOUTHERLY LINE OF SAID TRACT 19, NORTH 89° 59' 57" WEST A DISTANCE OF 20.01 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF WEST 16 AVENUE (A 70.00-FOOT WIDE RIGHT-OF-WAY), SAID RIGHT-OF-WAY LINE BEING 20.00 FEET WESTERLY OF, AS MEASURED, AT RIGHT ANGLES, AND PARALLEL TO THE EASTERLY LINE OF SAID TRACTS 17, 18 AND 19; THENCE ALONG SAID WESTERLY RIGHT-OF-WAY LINE OF N.W. 16 AVENUE, NORTH 01° 26' 15" WEST A DISTANCE OF 706.15 FEET TO THE POINT OF BEGINNING; THENCE DEPARTING SAID WESTERLY RIGHT-OF-WAY LINE OF WEST 16 AVENUE, NORTH 90° 00' 00" WEST A DISTANCE OF 273.45 FEET; THENCE NORTH 00° 00' 00" EAST A DISTANCE OF 249.34 FEET TO THE SOUTHERLY RIGHT-OF-WAY LINE OF WEST 37 STREET (A 70.00-FOOT RIGHT-OF-WAY), SAID RIGHT-OF-WAY LINE BEING 35.00 FEET SOUTHERLY OF, AS MEASURED, AT RIGHT ANGLES, AND PARALLEL TO THE NORTHERLY LINE OF SAID TRACT 17; THENCE ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE OF WEST 37 STREET, SOUTH 89° 58' 02" EAST A DISTANCE OF 242.83 FEET TO THE BEGINNING OF A CURVE

CONCAVE SOUTHWESTERLY, HAVING A RADIUS OF 25.00 FEET; THENCE EASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE A DISTANCE OF 38.62 FEET THROUGH A CENTRAL ANGLE OF 88° 31' 47" TO A POINT, SAID POINT BEING ON THE WESTERLY RIGHT-OF-WAY LINE OF SAID WEST 16 AVENUE; THENCE ALONG THE WESTERLY RIGHT-OF-WAY LINE FO SAID WEST 16 AVENUE, SOUTH 01° 26' 15" EAST A DISTANCE OF 224.90 FEET TO THE POINT OF BEGINNING.

CONTAINING 1.54 ACRES, MORE OR LESS.

Section 3: Repeal of Ordinances in Conflict.

All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

Section 4: Penalties.

Every person convicted of a violation of any provision of the Code or any ordinance, rule or regulation adopted or issued in pursuance thereof shall be punished by a civil penalty not to exceed \$500.00 within the discretion of the court or administrative tribunal having jurisdiction. Each act of violation and each day upon which any such violation shall occur shall constitute a separate offense. In addition to the penalty prescribed above, the city may pursue other remedies such as abatement of nuisance, injunctive relief, administrative adjudication and revocation of licenses or permits.

Section 5: Severability Clause.

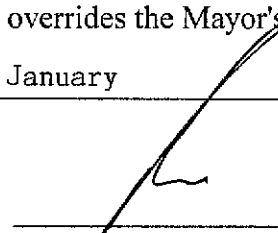
If any phrase, clause, sentence, paragraph or section of this ordinance shall be declared invalid or unconstitutional by the judgment or decree of a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs or sections of this ordinance.

Section 6: Effective Date.

This ordinance shall become effective when passed by the City Council and signed by the Mayor or at the next regularly scheduled City Council meeting, if the Mayor's signature is withheld or if the City Council overrides the Mayor's veto.

PASSED and ADOPTED this 23 day of January, 2007.


THE FOREGOING ORDINANCE
OF THE CITY OF HIALEAH WAS
PUBLISHED IN ACCORDANCE
WITH THE PROVISIONS OF
FLORIDA STATUTE 166.041
PRIOR TO FINAL READING.



Esteban Bovo
Council President

Attest:

Approved on this 25 day of January, 2007.



Rafael E. Granado, City Clerk



Mayor Julio Robaina

Approved as to form and legal sufficiency:



William M. Grodnick, City Attorney

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Ordinance was adopted by a unanimous vote with Councilmembers Bovo, Caragol, Casals-Muñoz, Gonzalez, Hernandez, Miel and Yedra voting "Yes".



CFN 2007R0131903
OR Bk 25344 Pgs 2848 - 2851; (4pgs)
RECORDED 02/07/2007 09:20:25
HARVEY RUVIN, CLERK OF COURT
MIAMI-DADE COUNTY, FLORIDA

DECLARATION OF RESTRICTIVE COVENANTS

(I) (WE), SWC OF WEST 16 AVENUE & WEST 37 STREET, HIALEAH, FL.

Being the owner(s) of lands described herein:

See attached "Applebee's Legal Description"

Also Known as: _____

Make the following Declaration of Restrictive Covenants covering and running with the above property, specifying that this restriction during its lifetime shall be for the benefit of and a limitation upon all present and future owners of the real property described above, in favor of and enforceable by the City of Hialeah, Florida. The undersigned is seeking an application for an approval of a rezoning of property from M-1 (Industrial District) to C-2 (Liberal Retail Commercial District) subject to limiting the use of the property to a restaurant, property located at the **southwestern corner of the intersection between West 16 Avenue and West 37 Street.**

In connection therewith, the undersigned covenant represents and agrees as follows:

1. The use of the property shall be limited as follows:
The applicant agrees that the out-parcel zoned C-2 (Liberal Retail District) and further known as "THE APPLEBEES RESTAURANT SITE", will only be used as a restaurant and no other use will be permitted.
2. This covenant is intended and shall constitute a restrictive covenant concerning the use, enjoyment, and title to the above-described property shall constitute a covenant running with the land and may be recorded in the Public Records of Miami-Dade County, Florida. This covenant shall remain in full force and effect and shall be binding upon the undersigned, its (their) heirs, successors and assigns until such time as the same is modified, amended or released and may only be modified, amended or released by a written instrument executed by the then owner having fee simple title to the property affected or to be affected by such modification, amendment, or release; provided, however, the same is also approved by the City Council and the Mayor of the City of Hialeah, or its successors, by resolution, upon advertised notice, or by ordinance if the covenant is adopted by ordinance or as otherwise provided in the Hialeah Charter.
3. The use of the property shall be in compliance with all ordinances, regulations, codes and charter of the City of Hialeah, Florida and applicable State and Federal Law and laws and regulations of Miami-Dade County, Florida.

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IN WITNESS WHEREOF, I (we) have hereunto set our hands and seals at:
MIAMI, FLORIDA, this 18th day of JANUARY, 2007.
(Location)

Signed, sealed and delivered in the presence of:

Carmen M. Rodriguez

Witness (2 witnesses required)

Typed/Printed Name CARMEN M. RODRIGUEZ

TROPICARE NIALBAH, INC.

Rich W. Oden, PRESIDENT

Owner

RICHARD W. OGDEN

Kristin Leeds

Witness

Typed/Printed Name Kristin Leeds

Witness (2 witness required)

Typed/Printed Name _____

N/A

Co-Owner

Typed/Printed Name _____

Witness

Typed/Printed Name: _____

STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I HEREBY CERTIFY that on this 18th day of January, 2007, before me, an officer
duly authorized in the State of Florida and in the County of Miami-Dade, to take acknowledgements,
personally appeared Richard W. Oden and

and to me known to be the person(s) described herein and
who executed the foregoing instrument, and he/she/they acknowledge before me, under oath, that
he/she/they executed same.

WITNESS my hand and official seal this 18th day of January, 2007

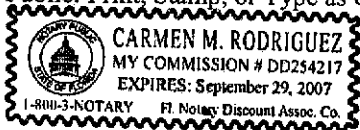
Carmen M. Rodriguez

Notary Public State of Florida

Personally known to me, or
Produced identification:

Identification produced:

(Name of Notary Public: Print, Stamp, or Type as Commissioned)



Did take an oath
Did Not take an oath

Did take an oath
~~Did Not take an oath~~

APPLEBEE'S LEGAL DESCRIPTION

A PARCEL OF LAND LYING WITHIN TRACT 17, FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2 ON PAGE 17 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA IN SECTION 11, TOWNSHIP 53 SOUTH, RANGE 40 EAST, CITY OF HIALEAH, MIAMI-DADE COUNTY, FLORIDA. SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE WEST LINE OF THE EAST 20 FEET OF TRACTS 17, 18 AND 19, FLORIDA FRUIT LANDS COMPANY'S SUBDIVISION NO. 1, ACCORDING TO THE PLAT THEREOF, AS RECORDED IN PLAT BOOK 2 ON PAGE 17 OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA IN SECTION 11, TOWNSHIP 53 SOUTH, RANGE 40 EAST WITH THE SOUTH LINE OF SAID TRACT 19 (NOTE: THE BEARINGS RECITED HEREIN ARE RELATIVE TO THE WEST RIGHT OF WAY LINE OF WEST 16TH AVENUE HAVING A BEARING OF N01°26'15"W) THENCE N01°26'15"W, ALONG SAID WEST LINE, SAID WEST LINE ALSO BEING THE WEST RIGHT OF WAY LINE OF WEST 16TH AVENUE A 70 FOOT WIDE RIGHT OF WAY, A DISTANCE OF 869.63 FEET TO THE POINT OF BEGINNING; THENCE N90°00'00"W, DEPARTING SAID WEST LINE, A DISTANCE OF 138.15 FEET; THENCE N00°01'58"E, A DISTANCE OF 85.84 FEET TO THE INTERSECTION WITH THE SOUTH LINE OF THE NORTH 20 FEET OF SAID TRACT 17 SAID SOUTH LINE ALSO BEING THE SOUTH RIGHT OF WAY LINE OF WEST 37TH STREET A 70 FOOT WIDE RIGHT OF WAY; THENCE S89°58'02"E, ALONG SAID SOUTH LINE, A DISTANCE OF 111.59 FEET TO THE POINT OF CURVATURE OF A CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 25.00 FEET; THENCE EASTERLY, SOUTHEASTERLY AND SOUTHERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 88°31'47", A DISTANCE OF 38.63 FEET TO THE POINT OF TANGENCY WITH THE SAID WEST LINE OF THE EAST 20 FEET OF TRACTS 17, 18 AND 19 AND THE WEST RIGHT OF WAY OF WEST 16TH AVENUE; THENCE S01°26'15"E, ALONG SAID WEST LINE, A DISTANCE OF 61.42 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 11,632 SQUARE FEET, MORE OR LESS.